



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94467; File No. SR-NYSE-2022-13]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change for Certain Amendments to the Preamble to Rule 9217**

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 4, 2022, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes certain amendments to the preamble to Rule 9217. The proposed rule change is available on the Exchange’s website at [www.nyse.com](https://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain amendments to the preamble to Rule 9217.

The preamble to current Rule 9217 consists of two paragraphs. The first provides that any member organization of covered person<sup>3</sup> may be subject to a fine under Rule 9216(b) with respect to any rules listed therein and that the fine amounts and fine levels set forth therein shall apply to the fines imposed. The second paragraph provides that nothing in the rule requires the Exchange to impose a fine for a violation of any rule under the Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under Rule 9217.

The Exchange proposes to add two additional paragraphs to the preamble based on the preamble to the version of Rule 9217 adopted by the Exchange's affiliate NYSE Arca, Inc. ("NYSE Arca") and to reorder the paragraphs as subsections (a) through (d), as follows.

The current first paragraph of the preamble to Rule 9217 would become new subsection (a). The text would be unchanged except that the Exchange would add " , not to exceed \$5,000," after fine to clarify that a minor rule fine on the Exchange cannot exceed \$5,000.<sup>4</sup>

The Exchange would add a new subsection (b) that would provide that Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule.

Proposed Rule 9217(b) is identical to NYSE Arca Rule 10.9217(b).

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<sup>3</sup> Rule 9120(g) defines covered person to mean a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange.

<sup>4</sup> See Securities Exchange Act Release No. 87212 (October 3, 2019), 84 FR 54193 (October 9, 2019) (SR-NYSE-2019-44) (Order) (increasing the maximum fine for minor rule violations to \$5,000 in order to align the Exchange's minor rule plan more closely with that of its affiliates).

The Exchange would also add the following text as new subsection (c) to Rule 9217:

Any person or organization found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of \$2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

Proposed subsection (c) is identical to NYSE Arca Rule 10.9217(c).

Finally, the current second paragraph of the preamble to Rule 9217 would become new subsection (d). The text of proposed Rule 9217(d) would be unchanged.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in Rule 9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.

The Exchange believes that harmonizing the preamble to Rule 9217 with that of its affiliates would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing greater harmonization between Exchange rules and those of its affiliates in connection with minor rule fines, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, by adopting the same applicable minor rule standards for violations of those standards as its affiliates, the Exchange would promote regulatory consistency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to align the Exchange's rule setting forth violations eligible for a minor rule fine more closely with that of its affiliates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2022-13 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2022-13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2022-13 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>9</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>10</sup> which governs minor rule violation plans.

As stated above, the Exchange proposes certain amendments to the preamble of Rule 9217. Specifically, the Exchange proposes to add two additional paragraphs to the preamble based on the preamble of NYSE Arca, its affiliate exchange, add clarifying language regarding the maximum fine amount for violations appropriate for disposition under Rule 9216(b), and reorder the paragraphs to the preamble of Rule 9217. The Commission believes that Rule 9217 is an effective way to discipline a member for a minor violation of a rule. The Commission finds that the Exchange's proposal to amend the preamble is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities. The Commission also believes that the Exchange's proposal to add clarifying language regarding the maximum fine amount for violations appropriate for disposition under Rule 9216(b) and to

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<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

reorder the paragraphs in the preamble is consistent with the Act because such changes will add clarity and accuracy to the Exchange's rules.

In approving the propose rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 9216(b) and 9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 9217 or whether a violation requires formal disciplinary action.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

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<sup>11</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>12</sup> and Rule 19d-1(c)(2) thereunder,<sup>13</sup> that the proposed rule change (SR-NYSE-2022-13) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 240.19d-1(c)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).